

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Matthew Campos	Team: Squad #16	CCRB Case #: 201608165	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 09/21/2016 6:00 AM	Location of Incident: Inside § 87(2)(b) 1st Floor	Precinct: 75	18 Mo. SOL 3/21/2018	EO SOL 3/21/2018	
Date/Time CV Reported Fri, 09/23/2016 1:54 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 09/23/2016 1:54 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. DT3 Frank Batista	00628	926551	WARRSEC
2. DT3 Michael Greaney	7490	947762	WARRSEC
3. POM Sean Kelly	04838	949162	WARRSEC

Officer(s)	Allegation	Investigator Recommendation
A.DT3 Frank Batista	Abuse: Detective Frank Batista entered and searched the 1st Floor Apartment at § 87(2)(b) in Brooklyn.	
B.DT3 Michael Greaney	Abuse: Detective Michael Greaney entered and searched the 1st Floor Apartment at § 87(2)(b) in Brooklyn.	
C.POM Sean Kelly	Abuse: Police Officer Sean Kelly entered and searched the 1st Floor Apartment at § 87(2)(b) in Brooklyn.	
D.DT3 Frank Batista	Abuse: Detective Frank Batista entered and searched the 2nd Floor Apartment at § 87(2)(b) in Brooklyn.	
E.DT3 Michael Greaney	Abuse: Detective Michael Greaney entered and searched the 2nd Floor Apartment at § 87(2)(b) in Brooklyn.	
F.POM Sean Kelly	Abuse: Police Officer Sean Kelly entered and searched the 2nd Floor Apartment at § 87(2)(b) in Brooklyn.	
G.DT3 Michael Greaney	Abuse: Detective Michael Greaney refused to provide his name and shield number to § 87(2)(b)	
H.POM Sean Kelly	Abuse: Police Officer Sean Kelly refused to provide his name and shield number to § 87(2)(b)	

### Case Summary

On September 23, 2016, § 87(2)(b) filed his complaint with the Civilian Complaint Review Board via telephone.

On September 21, 2016, at approximately 6:00 AM, § 87(2)(b) was awoken by knocking on the door to § 87(2)(b) in Brooklyn. Detective Frank Batista, Detective Michael Greaney, and Police Officer Sean Kelly, of the Bronx Warrant Section, appeared at § 87(2)(b) to execute an I-Card for § 87(2)(b). The officers also carried with them a warrant for § 87(2)(b). § 87(2)(b) spoke with officers at the front door to the building. The officers then walked into the hallway and spoke with § 87(2)(b) there; Det. Batista explained to § 87(2)(b) that they were at the location for the said warrant and I-Card and asked permission to enter. § 87(2)(b) asked Det. Batista to see the warrants he was talking about. Detective Batista allegedly did not show § 87(2)(b) a warrant. The officers then allegedly walked into § 87(2)(b)'s apartment, and searched the first and second floors of § 87(2)(b) (Allegation A, B, C, D, E, and F). The officers did not find the subjects of their search. As the officers were leaving, § 87(2)(b) allegedly asked the officers for their name and badge numbers. Det. Batista gave § 87(2)(b) his business card. Det. Greaney and PO Kelly did not respond (Allegation G and H).

This case has remained open past the 90 day benchmark. Det. Batista was interviewed twice, which prolonged the investigation.

### Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation during his sworn statement (Board Review 01).
- On January 19, 2017, the Comptroller's Office confirmed that no Notice of Claim was filed on or behalf of § 87(2)(b) in regards to an incident involving NYPD officers at § 87(2)(b) in Brooklyn on September 21, 2016 (Board Review 02).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### Civilian and Officer CCRB Histories

- This is one out of two complaints § 87(2)(b) reported to the CCRB. This is § 87(2)(b)'s only open complaint with the CCRB (Board Review 04).
- Detective Batista has been a member of service for sixteen years. There are two prior allegations made against Detective Batista, stemming from an incident in June of 2002. None of the prior allegations were substantiated (Board Review 05).
- Detective Greaney has been a member of service for eight years (Board Review 06). There are thirty five prior allegations against Detective Greaney, the following of which were substantiated:
  - In CCRB case 201017328, a frisk allegation and a search allegation were substantiated with charges. The NYPD Dispositions were Instructions for the frisk and No Disciplinary Action for the search.

- In CCRB case 201507726, an entry and/or search allegation and a property damage allegation were substantiated and the board recommended charges. The NYPD Disposition is pending.
- In CCRB case 201508062, an entry and/or search allegation was substantiated and the Board recommended Command Discipline B. The NYPD Disposition is pending.
- PO Kelly has been a member of service for six years. There are seven prior allegations stemming from three cases in 2013 and 2014. None of the prior allegations were substantiated, § 87(2)(g) [REDACTED] (Board Review 07).

### **Potential Issues**

- Witness testimonies could not be obtained. § 87(2)(b) [REDACTED] identified one resident of the second floor apartment, § 87(2)(b) [REDACTED]. However, all attempts to reach § 87(2)(b) [REDACTED] via letters sent in the mail and delivered by field work, phone numbers found by Lexis and CLEAR search, searches of BADS, and search of previous complaints through CTS were unsuccessful.

### **Findings and Recommendations**

#### **Allegations not pleaded**

- § 87(2)(g) [REDACTED] Although § 87(2)(b) [REDACTED] alleged that Detective Batista did not provide his shield number, § 87(2)(b) [REDACTED] also testified that Detective Batista provided him with his business card (Board Review 01).
- § 87(2)(g) [REDACTED] Although in his testimony § 87(2)(b) [REDACTED] requested to see a warrant, there was no search warrant in Det. Batista's possession at the time. Det. Batista had an arrest warrant (Board Review 08) § 87(2)(g) [REDACTED]

#### **Officer Identification**

- Although § 87(2)(b) [REDACTED] alleged that there were multiple officers surrounding his home, Det. Batista, Det. Greaney, and PO Kelly were identified as the only officers present during the incident. § 87(2)(g) [REDACTED]  
[REDACTED]  
[REDACTED]

**Allegation A—Detective Batista entered and searched the 1<sup>st</sup> floor apartment at § 87(2)(b) in Brooklyn.**

**Allegation B—Detective Michael Greaney entered and searched the 1<sup>st</sup> floor apartment at § 87(2)(b) in Brooklyn.**

**Allegation C—Police Officer Sean Kelly entered and searched the 1<sup>st</sup> floor apartment at § 87(2)(b) in Brooklyn.**

§ 87(2)(b) alleged that after the officers informed him of the subjects of their investigation, they told him that they would have to search his home. In response, § 87(2)(b) stated that they could not enter and search his home by saying, “No you cannot search my home,” in the hallway of his apartment building. The officers walked past him and entered the front door to his apartment, which he had left cracked open. § 87(2)(b) did not physically attempt to stop the officers because he wanted to avoid any physical conflict. The officers walked into § 87(2)(b)'s bedroom, looked under his bed, in his closet, in his drawers, under his daughter's crib, and inside a drawer that was five feet long and six inches tall. They also entered his kitchen, searched his kitchen cabinets, and around his fridge and dryer. The officers moved on to § 87(2)(b)'s living room and searched around his couch, inside a fifteen by four foot long cabinet. The officers were then finished searching § 87(2)(b)'s home and exited his apartment (Board Review 01).

In Det. Batista's testimony, he stated that § 87(2)(b) provided verbal consent that allowed the officers to enter and search his home. Det. Batista stated that after he had spoken to § 87(2)(b) regarding the subjects of his investigation, he asked § 87(2)(b) if he could enter his apartment and search for the individuals. Det. Batista could not remember the exact phrasing of his request, but was sure that he made said request. § 87(2)(b) stated that the officers could enter his home. Det. Batista could not recall the exact phrasing of § 87(2)(b)'s consent, but did recall that it happened. § 87(2)(b) then opened his apartment door to the officers, and waved them inside with his arm. Det. Batista entered the apartment, while another officer stayed at the entrance to the front door; Det. Batista could not recall who entered the apartment with him, but knew it was either Det. Greaney or PO Kelly. Det. Batista could not recall the layout of the apartment, but did recall that he searched under § 87(2)(b)'s bed and inside a large closet. After two to three minutes the officers finished inside, and exited the first floor apartment; at no point did § 87(2)(b) object to the presence of officers in his home (Board Review 08).

On September 21, 2016, Det. Batista also prepared a DD5 report to detail his investigation. In the report, Det. Batista recorded, “On September 21, 2016, at approximately 0615 hours I along with Det Greaney and PO Kelly did visit said address for an apprehension attempt. A male black opened the door and invited us into his house. He identified himself as § 87(2)(b) tel# § 87(2)(b) ” (Board Review 10).

In Det. Greaney's testimony, he stated that § 87(2)(b) provided verbal consent for officers to enter and search his home for the wanted individuals. After Det. Batista explained who the officers were looking for, § 87(2)(b) responded by saying, “You can come in and check,” while he gestured with his arm to signal officers into his home. Det. Batista and PO Kelly then entered the first floor apartment Det. Greaney stayed at the front door to the building, and did not witness what happened inside the first floor apartment (Board Review 11).

In PO Kelly's testimony, he stated that Det. Batista spoke to § 87(2)(b) at the entrance to the building front door. After speaking with Det. Batista for approximately two minutes, § 87(2)(b) moved his body to the side, and allowed Det. Batista and PO Kelly into the building's hallway and then Det. Batista entered the home. PO Kelly could not recall what § 87(2)(b) stated, because he was speaking directly to Det. Batista. PO Kelly could not recall if § 87(2)(b) or Det. Batista was leading the group into the apartment. § 87(2)(b) did not resist or protest Det. Batista's entry. PO Kelly did not recall entering the first floor apartment with Det. Batista and § 87(2)(b) and he did not witness what happened inside. No subjects were found in the first floor apartment, and Det. Batista and § 87(2)(b) exited it (Board Review 12).

§ 87(2)(g)

**Allegation D—Detective Frank Batista entered and searched the 2<sup>nd</sup> floor apartment at § 87(2)(b) in Brooklyn.**

**Allegation E—Detective Michael Greaney entered and searched the 2<sup>nd</sup> floor apartment at § 87(2)(b) in Brooklyn.**

**Allegation F—Police Officer Sean Kelly entered and searched the 2<sup>nd</sup> floor apartment at § 87(2)(b) in Brooklyn.**

§ 87(2)(b)'s statement continued by alleging that after the officers finished searching his home, they exited the front door of his apartment, walked back into the hallway, and then walked up stairs to the second floor apartment. § 87(2)(b) identified the second floor resident as § 87(2)(b). The officers knocked on § 87(2)(b)'s door, but § 87(2)(b) did not open it to them. The officers then walked back downstairs and asked § 87(2)(b) to persuade the second floor residents to open the door. § 87(2)(b) followed the officers upstairs and spoke with § 87(2)(b). § 87(2)(b) opened his door to the officers and asked what was happening. The officers explained the situation to § 87(2)(b). At that point, § 87(2)(b) returned downstairs. Although § 87(2)(b) did not witness the officers enter and search § 87(2)(b)'s apartment, § 87(2)(b) later informed him that the officers had entered and searched his home and his attic in a similar fashion. The officers finished searching in § 87(2)(b)'s apartment, and returned downstairs and spoke with § 87(2)(b) again (Board Review 01).

According to Det. Batista, after he and another officer entered the first floor apartment, they then walked upstairs with § 87(2)(b). Det. Batista knocked on the door with no answer. § 87(2)(b) then spoke through the door, addressed the resident of the second floor apartment by name, informed them they he was there with NYPD officers, and persuaded him to open the door. § 87(2)(b) instructed the residents of the second floor apartment to allow officers into their home. The resident moved out of the way of the door, and allowed officers inside. The officers were present in the second story apartment for approximately 30 seconds; the resident did not object to the officers' presence during the incident (Board Review 08).

According to Det. Greaney, after officers finished with the first floor apartment, § 87(2)(b) then led officers upstairs to the entrance of the second floor apartment. Det. Greaney remained at the front door to the building, and did not witness the officers enter the second floor apartment. Det. Greaney did hear § 87(2)(b) persuade the residents of the second floor apartment to allow officers inside their homes, and stated that Det. Batista and PO Kelly did enter the second floor apartment (Board Review 11).

According to PO Kelly, after Det. Batista and § 87(2)(b) exited the first floor apartment, he, Det. Batista, and § 87(2)(b) then all walked upstairs. The officers knocked at the door to no answer. Then § 87(2)(b) spoke through the door and instructed the second floor residents to open the door and allow the officers inside to search for their subjects. Two residents opened the door and stated, “Alright,” and allowed the officers into their home. PO Kelly and Det. Batista searched through the rooms in the apartment, but did not open any cabinets or closets (Board Review 12).

§ 87(2)(g)

**Allegation G—Detective Michael Greaney refused to provide his name and shield number to § 87(2)(b)**

**Allegation H—Police Officer Sean Kelly refused to provide his name and shield number to § 87(2)(b)**

In his testimony, § 87(2)(b) stated that after Det. Batista, Det. Greaney, and PO Kelly searched the first and second floor apartments at § 87(2)(b) they spoke to him on the first floor and he requested the name and shield numbers of all the officers by stating, “May I have y’all badge numbers and names?” During his interview, § 87(2)(b) was clear that he directed his question at all the officers. Det. Batista then gave him his business card with identifying information. Det. Greaney and PO Kelly did not give their information to § 87(2)(b) or respond to his request (Board Review 01).

In his testimony, Det. Batista stated § 87(2)(b) did not request any officer’s name or badge numbers at any point during the incident. Det. Batista gave § 87(2)(b) his business card because he instructed § 87(2)(b) to call him if he learned any information about the subjects of his investigations (Board Review 08).

In his testimony, Det. Greaney stated that he did not witness § 87(2)(b) request the name or badge numbers of any officer during the incident. Det. Greaney was aware of that at some point Det. Batista gave § 87(2)(b) a business card, but did not indicate why (Board Review 11).

In his testimony, PO Kelly stated that he did not recall any resident making a request for any of the officers’ names or badge numbers. PO Kelly did not recall any officer giving a business card to § 87(2)(b) (Board Review 12).

Section 203-09 of the NYPD Patrol Guide states the following: “Courteously and clearly state your rank, name, shield number and command, or otherwise provide them, to anyone who requests you to do so. Allow the person ample time to note this information (Board Review 13).

---

Squad:

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date